

REMARKS

Claims 1-28 are pending in the application. Claims 5, 6, 8-10, and 12-16 have been withdrawn pursuant to a restriction/election of species requirements. No claims are presently allowed.

Claims 1, 21, and 22 have been amended to change “consisting essentially of” to “comprising” in reference to the composite.

Claims 1, 21, and 22 have been amended to recite that the article comprises from about 60 to about 95 vol.% of the polymeric matrix. Support for this amendment is found at page 7, line 7 (5-40 percent foam density leaves 60-95% open-cells) and page 9, lines 12-14 (polymer fills the open-cells).

Claims 23-25 have been amended to change “consists essentially of” to “consists of” and to recite the optional components recited in claims 1, 21, and 22.

Claim 25 is amended to correct the preamble to correspond with claim 22.

New claims 26-28 recite a vol.% matrix of about 90 to about 95. Support for 90% is found at page 7, line 9 (10 percent foam density).

No new matter has been added.

Claim Rejections – 35 U.S.C. § 102

Claims 1-4, 7, 11, 19, 22, 23, and 25 have been rejected under 35 U.S.C § 102(b) as allegedly anticipated by Tsang et al. (US 4,605,595).

In order to make a *prima facie* case of anticipation, the reference must disclose each limitation of the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053, 814 F.2d 628, 631 (Fed. Cir. 1987); MPEP 2131. Among other deficiencies, the reference does not disclose the limitation in claims 1 and 22 that the article comprises from about 60 to about 95 vol.% of the polymeric matrix. Tsang discloses the weight percentages of the ingredients (Fig. 2) but not their densities. Given that the highest disclosed weight percentage of binder is 40 wt.% (col. 3, line 26) and the high amounts of fillers used, it appears that 60 vol.% binder is not disclosed.

Claims 2-4, 7, 11, 19, and 23 depend from and contain all the limitations of claim 1, and claim 25 depends from and contains all the limitations of claim 22. The arguments regarding the lack of *prima facie* for claims 1 and 22 are applicable to claims 2-4, 7, 11, 19, 23, and 25.

Further, as to claims 23 and 25, the claims now use the phrase “consists of.” This phrase excludes the filler, friction modifier, and reinforcing fiber of Tsang.

Claim Rejections – 35 U.S.C. § 103

Claims 17, 18, 20, 21, and 24 have been rejected under 35 U.S.C § 103(a) as being allegedly unpatentable over Tsang.

In order to make a *prima facie* case of obviousness, each claim limitation must be disclosed in the references (MPEP 2143.03). As above, the reference does not disclose the limitation in claim 1 (claims 17, 18, and 20 dependent thereon) and 21 (claim 24 dependent thereon) that the article comprises from about 60 to about 95 vol.% of the polymeric matrix. As all the claim limitations of claim 1 are not disclosed in the reference, a *prima facie* case of obviousness has not been made.

Further, as to claim 24, the claim now uses the phrase “consists of.” This phrase excludes the filler, friction modifier, and reinforcing fiber of Tsang.

It also noted that new claims 26-28 recite a vol.% polymeric matrix of 90-95. As the foam of Tsang contains 93-95% voids (col. 4, line 13) with significant amount of non-binder materials in the voids, there cannot be 90-95% binder in Tsang.

In view of the foregoing, it is submitted that the application is now in condition for allowance.

In the event that a fee is required, please charge the fee to Deposit Account No. 50-0281, and in the event that there is a credit due, please credit Deposit Account No. 50-0281.

Respectfully submitted,



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